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**TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL  
ASSURANCE BOARD**

**SECOND NOTICE OF COMMENT PERIOD  
#00-135(FAB)**

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE UNDERGROUND STORAGE TANK EXCESS  
LIABILITY FUND**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules in 328 IAC regarding the Underground Storage Tank Excess Liability Trust Fund (ELTF) and the payment of claims thereunder. This rulemaking may add, modify or delete requirements. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed.

**HISTORY**

First Notice of Comment Period: July 1, 2000, Indiana Register (23 IR 2614).

**CITATIONS AFFECTED:** 328 IAC 1-1-1; 328 IAC 1-1-2; 328 IAC 1-1-3; 328 IAC 1-1-3.1; 328 IAC 1-1-4; 328 IAC 1-1-5; 328 IAC 1-1-5.1; 328 IAC 1-1-6; 328 IAC 1-1-7; 328 IAC 1-1-8; 328 IAC 1-1-9; 328 IAC 1-1-9.1; 328 IAC 1-1-10; 328 IAC 1-1-11; 328 IAC 1-2-1; 328 IAC 1-2-2; 328 IAC 1-2-3; 328 IAC 1-3-1; 328 IAC 1-3-2; 328 IAC 1-3-3; 328 IAC 1-3-4; 328 IAC 1-3-5; 328 IAC 1-3-6; 328 IAC 1-4-1; 328 IAC 1-4-3; 328 IAC 1-5-1; 328 IAC 1-5-2; 328 IAC 1-5-3; 328 IAC 1-6-1; 328 IAC 1-6-2; 328 IAC 1-7-1; 328 IAC 1-7-2; 328 IAC 1-7-3.

**AUTHORITY:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7.

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

The rules governing the administration of the Underground Storage Tank Excess Liability Trust Fund (ELTF) and the payment of claims thereunder require amendment to reflect that the 1998 deadline for upgrade of underground petroleum storage tanks has passed, among other changes. The rules also need to be updated to include changes to statutory references that have changed and references to new or amended rules within the ELTF rules.

**SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from July 1, 2000, through July 30, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

C. Michael Pitts, Executive Director, Indiana Petroleum Marketers and Convenience Store Association (IPCA).

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* A definition is needed for the term "emergency measures" as used in 328 IAC 1-1-3, the definition of "Corrective Action."

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* Several definitions in section 328 IAC 1-1 refer to repealed statutes.

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* 328 IAC 1-2-2 calls for the Financial Assurance Board to submit an annual report to the Environmental Policy Commission by September 1 of each year. The Environmental Policy Commission no longer exists. The IPCA believes an annual report should be prepared and submitted to the Environmental Quality Service Council (EQSC).

*Response:* IDEM agrees that an annual report should be prepared and submitted by September 1 of each year. IDEM believes that the report should be submitted to the Financial Assurance Board (FAB) rather than to the EQSC. Accordingly, 328 IAC 1-2-2 has been redrafted.

*Comment:* 328 IAC 1-3-2(c), calling for money to be placed in a reserve fund for tank upgrades may be repealed. The tank upgrade

deadline has passed and there is no longer a need for this specific program.

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* 328 IAC 1-3-3(a)(2) refers to the old spill rules 327 IAC 2-6-2.1 which has been repealed and replaced with 327 IAC 2-6.1

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* 328 IAC 1-3-5 has extensive provisions outlining reimbursable expenditures. These have not been updated since 1997 and should be reviewed at this time. Remediation technologies and the equipment involved change from time to time, as do cost factors.

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* 328 IAC 1-4-1 outlines an extensive scoring model for prioritization of claims. It is unclear to us whether this numerical ranking system is currently being used by IDEM staff. Moreover, with a healthy Fund balance at present, we question whether such a system is currently necessary. If not, these rules could be amended to call for prioritization only when the Fund balance drops below a certain level.

*Response:* IDEM agrees and the rule has been redrafted accordingly.

*Comment:* 328 IAC 1-5-2 allows for "pre-approval" of corrective action costs. To the best of our knowledge rules or policies have not been adopted which outline the preapproval process.

*Response:* IDEM believes that "pre-approved" requests should only be made for the determination of eligibility of an owner/operator. The rule has been redrafted accordingly.

*Comment:* Rules have not been adopted which recognize that under statute, a corrective action plan which has not been approved by IDEM within 90 days is considered to be "deemed approved." The end result is that many tank owners are reluctant to move ahead with a clean up until such a time as their corrective action plan has been officially approved by IDEM.

*Response:* 328 IAC 1-5-3 has been added to clarify "deemed approved."

*Comment:* 328 IAC 1-6-1 which outlines procedures for payment of third party claims should be re-evaluated vis-à-vis IDEM's near-final Risk Integrated System of Closures (RISC) cleanup plan. The IPCA believes that implementation of RISC will lead to numerous and more costly third party claims.

*Response:* IDEM believes this issue has been addressed in the redrafted rule.

*Comment:* 328 IAC 1-7-1 calls for the issuance of a certificate of financial assurance within 60 days of the effective date of the rule (1992). Many new UST owners have come on line since that time. To the best of our knowledge, in only one year since 1992, were new certificates issued. Tank owners have subsequently been advised to maintain evidence on site that current annual UST Registration fees have been paid. This rule should be re-evaluated in view of EPA financial assurance requirements and current practice.

*Response:* IDEM has redrafted the rule language.

*Comment:* Regarding 328 IAC 2, this entire rule pertains to a program which is no longer necessary. The December 22, 1998 UST upgrade deadline has passed and so has the one-year time period allowed for USTs to be put in temporary closure. By this time, all USTs should have been upgraded, replaced or closed. In our opinion, this rule can be repealed.

*Response:* IDEM agrees and the rule is proposed to be repealed.

## **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments, whether mailed, faxed, or hand delivered, should be addressed to:

#00-135 (FAB) General Update of Rules

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty between 8:15 a.m. and 4:45 p.m. at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section, at (317) 232-7995 or (317) 232-8899.

## **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by March 5, 2001.

Additional information regarding this action may be obtained from Pam Koons, in the Rules, Planning, and Outreach Section,

Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. 328 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

### ARTICLE 1. PAYMENT OF CORRECTIVE ACTION AND THIRD PARTY LIABILITY CLAIMS FROM THE EXCESS LIABILITY TRUST FUND

#### 328 IAC 1-1-1 Application of definitions

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 1. The definitions in this rule IC 13-11-2 apply throughout to this article. All other words and phrases used in this article have the same meaning as those defined in IC 13-7-20 and 42 U.S.C. 6991 through 42 U.S.C. 6991i (and all regulations related thereto). **In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051*)

SECTION 2. 328 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

#### 328 IAC 1-1-2 “Administrator” defined

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 2. “Administrator” refers to the administrator of the ~~excess liability~~ fund. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051*)

SECTION 3. 328 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

#### 328 IAC 1-1-3 “Corrective action” defined

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 3. “Corrective action” means action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including emergency measures taken as part of an initial response ~~Corrective action does not include repair or replacement of an underground storage tank or its associated equipment, as specified in IC 13-7-20-33(a)(1).~~ **to the release under 329 IAC 9-5-2.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051*)

SECTION 4. 328 IAC 1-1-3.1 IS ADDED TO READ AS FOLLOWS:

#### 328 IAC 1-1-3.1 “Corrective action plan” or “CAP” defined

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-7; IC 13-23-8-3

**Sec. 3.1. “Corrective action plan” or “CAP” means the corrective action plan described by 329 IAC 9-5-7(a) and 329 IAC 9-5-7(b).** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3.1*)

SECTION 5. 328 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

#### 328 IAC 1-1-4 “Deductible amount” defined

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-7; IC 13-23-8-3

Sec. 4. “Deductible amount” means the amount set forth in IC 13-23-8-3 applicable to each incident number assigned by the department, to be paid by ~~the owner or operator before being entitled to payment from the fund.~~ **any person who may apply to the**

**fund under 328 IAC 1-3-1.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103*)

SECTION 6. 328 IAC 1-1-5.1 IS ADDED TO READ AS FOLLOWS:

**328 IAC 1-1-5.1 “Emergency measures” defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

**Sec. 5.1. “Emergency measures” means any action that is taken at or near a petroleum release to abate an immediate threat of harm to human health, property or the environment. The actions taken must be approved by the department prior to payment from the fund.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051*)

SECTION 7. 328 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-1-6 “Fund” defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-7-1; IC 13-23-8

**Sec. 6. “Fund” means the underground petroleum storage tank excess liability trust fund established at IC 13-23-7-1.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103*)

SECTION 8. 328 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-1-7 “Occurrence” defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

**Sec. 7. “Occurrence” means an incident ~~including continuous or repeated conditions~~, that results in a release of petroleum, including a continuous or repeated release of petroleum, from an underground storage tank system.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051*)

SECTION 9. 328 IAC 1-1-8 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-1-8 “Reasonable costs” defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

**Sec. 8. “Reasonable costs” means a monetary amount or range, as determined by the department, which is commensurate with a response corrective action when the corrective action was taken. Reasonable costs shall be determined by the department by a review of the following:**

- (1) The activities outlined in the **approved or deemed approved** corrective action plan and those activities in fact performed.
- (2) The approved site characterization and those activities in fact performed.**
- (3) The emergency measures and those activities in fact performed.**
- ~~(2)~~ **(4)** The scope, complexity, and timing of the **response corrective action** activities.
- ~~(3)~~ **(5)** The fair market value of the costs for services or goods within the particular market or industry where the work is performed as provided, in part, in 328 IAC 1-3-5(c).

(*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Nov 1, 1995, 8:30 a.m.: 19 IR 342*)

SECTION 10. 328 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-1-9 “Substantial compliance” defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7  
**Affected:** IC 13-23-8-4

Sec. 9. "Substantial compliance" means that at the time a release was discovered, ~~the tank was registered under IC 13-7-20 and the owner or operator had taken affirmative steps to meet the requirements of the following underground petroleum storage tank laws:~~

- ~~(1) IC 13-7-20;~~
- ~~(2) Rules adopted under IC-7-20;~~
- ~~(3) 42 U.S.C. 6991 through 42 U.S.C. 6991i;~~
- ~~(4) Regulations adopted under 42 U.S.C. 6991 through 42 U.S.C. 6991i.~~

Proof of substantial compliance includes, but is not limited to, evidence of contractual agreements or other verifiable actions undertaken sufficiently in advance of a compliance date to provide a reasonable probability of meeting the terms of the statute or regulation. **comply with the requirements of IC 13-23-8-4.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343*)

SECTION 11. 328 IAC 1-1-9.1 IS ADDED TO READ AS FOLLOWS:

**328 IAC 1-1-9.1 "Site characterization" defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7  
**Affected:** IC 13-23

**Sec. 9.1. "Site characterization" means the initial site characterization described in 329 IAC 9-5-5.1 and investigations described in 329 IAC 9-5-6 and may include, as necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9.1*)

SECTION 12. 328 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-1-10 "Third party liability" defined**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7  
**Affected:** IC 13-23

Sec. 10. "Third party liability" is the damage a tank owner or operator is legally obligated to pay for injury, **expense, and damage** suffered by a third party as the result of a release. Third party liability includes ~~both~~ **personal** injury and property damage. **Third party liability does not include punitive or exemplary damages.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-10; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052*)

SECTION 13. 328 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-2-1 Applicability**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7  
**Affected:** IC 13-23

Sec. 1. This article implements provisions of ~~IC 13-7-20~~ **IC 13-23** for the administration of the ~~underground petroleum storage tank excess liability~~ fund. This article establishes procedures by which ~~eligible owners or operators of underground petroleum storage tanks~~ **persons listed in 328 IAC 1-3-1** may apply to the ~~excess liability~~ fund for payment of corrective action costs and third party liability claims arising from petroleum releases. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052*)

SECTION 14. 328 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-2-2 Fund management**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7  
**Affected:** IC 13-23

Sec. 2. The ~~underground storage tank financial assurance board~~ **administrator of the fund** shall prepare an annual report of fund administration to be delivered to the ~~environmental policy commission~~ **financial assurance board** by September 1 of each year. The

report shall include the following:

- (1) A financial statement detailing information for the management and oversight of the fund, including facts concerning the amount of money currently in the fund, the amount of money obligated for corrective actions and third party liability claims, and estimates of future revenue for and demands on the fund.
  - (2) An overview of the fund claims process.
  - (3) A report of the number of claims made against the fund that were approved and denied during the reporting year.
- (Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052)*

SECTION 15. 328 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-2-3 Obligation of monies**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 3. (a) ~~Monies shall be obligated from the fund based on the procedures listed under 328 IAC 1-4; however, not all claims on the priority list shall be paid each claims processing period.~~ Claims shall be paid in the order of priority ranking as the department processes them. The department shall not forward claims for payment to the auditor of state more than sixty (60) days after the closing date for receiving claims as specified in 328 IAC 1-4 received unless the procedure set forth in 328 IAC 1-4-1 is applicable.

(b) At the beginning of each **state** fiscal year, the administrator shall obligate sufficient monies for administering the fund. This amount shall be approved by the financial assurance board. ~~and based upon a budget prepared in accordance with guidelines provided by the state budget agency.~~ *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed May 25, 1999, 4:31 p.m.: 22 IR 3103)*

SECTION 16. 328 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-3-1 Fund access**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-7

Sec. 1. (a) ~~Only eligible tank owners or operators~~ **The following persons** may apply to the fund for payment of expenditures arising from corrective action and for indemnification of third party liability:

- (1) Eligible tank owners and operators.**
- (2) Persons designated by eligible tank owners and operators.**
- (3) Subsequent owners of the property upon which tanks were located if the previous tank owner or operator was eligible.**

(b) Corrective action costs and third party liability claims arising from releases reported or discovered before April 1, 1988, are not eligible for payment from the fund.

(c) Corrective action costs and third party liability claims arising out of intentional or reckless acts of the owner or operator, or their agents and employees, are not eligible for payment from the fund: *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103)*

SECTION 17. 328 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-3-2 Fund coverage**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 2. (a) Monies may be disbursed from the fund to the ~~eligible owner or operator~~ **persons listed in 328 IAC 1-3-1**, for the following activities related to corrective action: **payment of corrective action costs in compliance with IC 13-23-8-4(a)(5), (b) and (c) and IC 13-23-9-2(a), (b) and (c).** Site characterization costs may be disbursed from the fund to persons listed in 328 IAC 1-3-1 prior to an approved or deemed approved CAP, if the work for which payment is sought is completed in accordance with 329 IAC 9 or the Risk Integrated System of Closure (RISC) standards.

- (1) Investigation and environmental assessment of sites contaminated by a release of petroleum;
- (2) The rehabilitation of sites contaminated by a release of petroleum including, but not limited to, the clean-up of affected soils and waters using methods approved by the department;
- (3) The temporary replacement and permanent restoration of potable water supplies;

(b) Monies may be disbursed to ~~owners or operators~~ **persons listed in 328 IAC 1-3-1** for payment of claims of liability to third parties ~~upon proper application to the administrator and approval of the claim by the attorney general.~~ **in compliance with IC 13-23-9-3.**

(c) ~~Monies shall be placed in a reserve fund for the upgrade loan guaranty program established at IC 13-7-20-33.3: (Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053)~~

SECTION 18. 328 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-3-3 Eligibility requirements**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 6-8.1-5-2; IC 13-23-7; IC 13-23-8-4; IC 13-23-12

Sec. 3. (a) All **tank** owners or operators of underground storage tanks must do the following to be eligible for reimbursement from the fund:

- (1) Meet the requirements set forth in ~~IC 13-23-8-4~~ **IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4).**
- (2) In accordance with 329 IAC 9-4 and ~~327 IAC 2-6-2.1~~ **327 IAC 2-6.1** communicate a spill report to the department of environmental management.
- (3) Current **tank** owners or operators who have failed to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible for reimbursement from the fund in accordance with subsection (b) upon payment of all past due fees and interest.
- (4) A person who acquires ownership in accordance with subsection (e) shall be eligible for reimbursement from the fund upon timely payment of all past due tank fees, interest, and penalties in accordance with subsection (h).

(b) ~~An A~~ **A tank** owner or operator who fails to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible for reimbursement from the fund according to the following formula:

- (1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date that the fees for each tank first became due under IC 13-23-12 and continuing until the date on which the release occurred.
- (2) Determine the number of payments actually made under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date each tank became regulated under IC 13-23 and continuing until the date on which the release occurred. Divide the number of payments actually made by the number of payments due as determined in subdivision (1).
- (3) Determine the amount of money ~~an owner or operator~~ **the person** would have received from the fund if all payments due on the date the release occurred had been paid when due, and multiply the amount by:
  - (A) the percentage determined in subdivision (2), if the percentage is fifty percent (50%) or more; or
  - (B) zero (0), if the percentage determined in subdivision (2) is less than fifty percent (50%).

(c) Payments that were made or could have been paid four (4) times per year under IC 13-23-12-3 count as one (1) payment for purposes of this section. Each payment made or due on each tank at a facility shall count as an additional payment for purposes of this section in figuring the total payments made or due.

(d) ~~An owner or operator~~ **Persons listed in 328 IAC 1-3-1** who ~~has~~ **have** had a claim denied for failure to register an underground petroleum storage tank from which a release has occurred or for failure to pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due may resubmit the claim, regardless of whether the denial was appealed, under subsection (a). The resubmission must be in the form of a letter providing the facility identification number, the incident number, and, if an appeal was filed, a copy of a document indicating that the appeal was dismissed. The department has the option to settle any pending appeals **and resubmitted claims** based on the current regulations: ~~The settlement may be considered under 328 IAC 1-4-1 during the next available claims period.~~ **rules.**

(e) A person who acquires ownership or operation of an underground petroleum storage tank ~~after the expiration of P.L.69-1996,~~

SECTION 7 as a result of: **under IC 13-23-8-4.5(2)**

- (1) a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership and control;
- (2) a foreclosure or a deed transferred in lieu of a foreclosure;
- (3) the exercising of the person's lien rights; or
- (4) inheritance;

may become eligible for reimbursement from the fund by complying with subsection (f).

(f) A person described under subsection (e) may become eligible for reimbursement from the fund for any releases reported after the date that IDEM receives the "Intent to Acquire UST and Reinstate Eligibility" form by doing the following:

- (1) Submitting an Excess Liability Trust Fund "Intent to Acquire UST and Reinstate Eligibility" form (Form) as prescribed by the commissioner at least sixty (60) days prior to acquiring ownership or operation of an UST. This form will be kept confidential up to the earlier of the following: the date of the transfer of the property, IDEM's receipt of the monies provided in subsection (g), or for up to ninety (90) days after the projected date of closure listed in the Form. The department will provide a listing of environmental penalties, interest due to the Excess Liability Trust Fund, and fees due, to the prospective purchaser and the property owner within forty-five (45) days of receipt of the Form.
- (2) Paying all applicable tank fees, including past due fees, interest, and penalties for each tank not more than thirty (30) days after the transaction whereby the person acquires ownership or operation of each tank.
- (3) The seller of the UST site is liable for any and all unpaid tank fees, interest, and penalties that are assessed by IDEM in accordance with subsection (g). Within thirty (30) days after the purchaser's acquisition of the UST identified in the Form, the purchaser is to collect all past due tank fees, interest, and penalties from the noncompliant seller and remit to IDEM the full amount of the assessment for the subject UST provided by IDEM in accordance with subsection (g). The timely remittance of these monies is a condition of fund eligibility for the purchaser.

(g) ~~An owner or operator~~ **Persons listed in 328 IAC 1-3-1 and** described in subsection (e) who ~~fails fail~~ to pay tank fees when due ~~is are~~ subject to pay interest and penalties on those fees in order to become eligible for the fund under subsection (f). Interest and penalties due will include the following:

- (1) Penalties and interest due the department of revenue.
- (2) All past due underground storage tank fees under IC 13-23-12.
- (3) An environmental penalty as specified in subsection (h)(2). This penalty will be distributed into the ~~Excess Liability Trust Fund~~ and into the Petroleum Trust Fund in accordance with IC 13-23-12-7(b).
- (4) Interest will be charged for the missed fee(s) at the percent per year based on subsection (h) and ~~IC 6-8.1-5-2~~ **IC 6-8.1-10-1** until all fees due have been paid in full for each tank. This interest will be deposited into the ~~Excess Liability Trust Fund~~.

Payment of all fees, interest, and penalties due within thirty (30) days of the date of transfer of the subject property is a requirement for ~~Excess Liability~~ Fund eligibility for the purchaser.

(h) In addition to all past due fees owed, the amount of interest and penalties owed by a particular owner or operator is to be determined by the following formula:

(1) Interest:

Number of Delinquent Days × Daily Interest Rate = Interest Due

Year	Annual Percentage	Daily Interest Rate
1990	10%	.000273
1991	10%	.000273
1992	8%	.000219
1993	8%	.000219
1994	7%	.000191
1995	6%	.000164
1996	5%	.000136
1997	7%	.000191

~~Other years~~<sup>2</sup> Interest will be calculated according to ~~IC 6-8.1-5-2~~ **IC 6-8.1-10-1**.

(2) Penalty:

(A) For sites that were never registered, or sites for which no tank fees were paid when due, the penalty will be calculated at ~~fifty dollars (\$50)~~ **two thousand dollars (\$2,000)** per petroleum underground storage tank ~~per day~~ **for each year the fee was due**.

(B) For all other sites, the penalty will be calculated at ~~ten one thousand dollars (\$10)~~ **(\$1,000)** per petroleum underground storage tank ~~per day~~ **for each year the fee was due**.

(C) ~~The penalty will be assessed from the day that the tank fee was due, until the day that the fee was paid, for each occurrence~~

of late fee payment. Separate incidents of late or incomplete tank fee payments will be cumulative.

\*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. Copies of the Indiana Department of Environmental Management Underground Storage Tank Manual (1994) may be inspected and purchased from the Department of Environmental Management, Office of Environmental Response, Western Select Properties, 2525 North Shadeland Avenue, Indianapolis, Indiana. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1104; errata, 20 IR 1593*)

SECTION 19. 328 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-3-4 Amount of coverage**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 4. (a) The fund may pay for costs incurred by **an owner or operator persons listed in 328 IAC 1-3-1**, for corrective action and third party liability as specified in ~~IC 13-7-20-33(a)~~ **IC 13-23-8-1**.

(b) Regardless of the number of eligible **owners or operators persons listed in 328 IAC 1-3-1** at one (1) site, no more than one million dollars (\$1,000,000) less the applicable deductible amount may be applied to the costs, including third party liability claims, associated with a single occurrence. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054*)

SECTION 20. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

### **328 IAC 1-3-5 Reimbursable expenditures**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-3-2

Sec. 5. (a) ~~A tank owner or operator~~ **Persons listed in 328 IAC 1-3-1** may seek payment from the fund for the following costs related to necessary costs actually incurred in the performance of corrective action:

- (1) Investigation, which includes research, field time, report writing, and clerical support.
- (2) Travel, lodging, and per diem. These costs will be paid in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures.
- (3) ~~An owner or operator~~ **Persons listed in 328 IAC 1-3-1** may employ a certified contractor under IC 13-23-3-2 or may use the owner's or operator's personnel to perform all or part of a corrective action. ~~If applicable, personnel working on-site must be trained in accordance with the requirements in 29 CFR 1910.120\*.~~
- (4) Soil and water sampling for petroleum and petroleum constituents shall be performed in accordance with ~~department guidelines.~~ **with 329 IAC 9 or the risk integrated system of closure (risc) standards.**
- (5) Expenditures for machinery and equipment must be prorated based on the normal expected life of the item and the length of time the item was used for a single corrective action. In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges which can be made to the fund are disposable bailers and sample bottles.
- (6) ~~An owner or operator~~ **Persons listed in 328 IAC 1-3-1** may be reimbursed for expenditures for materials and supplies, such as disposable protective equipment, building materials (piping, cement), and preservatives.
- (7) Attorney fees, not to exceed ~~ten fifteen percent (10%)~~ **(15%)** of the total claim or ~~twenty thousand thirty thousand dollars (\$20,000); (\$30,000)~~, whichever is less, shall only be payable if incurred by the owner or operator in defense of litigation in a third party liability claim.
- (8) Governmental administrative fees for local, state, or federal permits necessary for corrective action.
- (9) Provision of alternate water supply. This cost must have been previously approved by the department.
- (10) Any other **reasonable** costs the department finds to be ~~reasonable and~~ necessary for corrective action or payment of a third party liability claim.
- (11) **Costs associated with transitioning a site to RISC will be paid if these costs would be less than the costs to complete the remediation under 329 IAC 9.**
- (12) **Mark-up of no more than fifteen percent (15%) will be reimbursed on all eligible costs except for the following:**

- (A) Travel costs, including mileage, per diem, and lodging.
- (B) Personnel costs.
- (C) Utilities for temporary facilities.
- (D) Governmental administrative fees for local, state, or federal permits.
- (E) Equipment and supplies not purchased or rented specifically for use at a facility or that are not part of the approved remedial technology.

(b) The following expenditures are ineligible for reimbursement from the fund:

- (1) Costs incurred before April 1, 1988.
- (2) Costs of repair, upgrading, or replacement of an underground petroleum storage tank or its associated equipment.
- (3) Costs of environmental investigation and remediation not directly related to a release from a qualifying underground storage tank. Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.
- (4) The cost of equipment purchases other than those expenditures routinely required to implement a corrective action plan. Examples of equipment purchases which cannot be charged to a specific site include drilling rigs, earth moving equipment, photoionization detectors, explosimeters, and hand tools.
- (5) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.
- (6) Lost income or reduced property values, unless part of a third party liability claim.
- (7) Interest or finance charges.
- (8) Contractor costs not directly related to corrective action activities, such as preparing cost estimates.
- (9) Fines or penalties imposed by local, state, or federal governmental agencies.
- (10) Punitive or exemplary damages.
- (11) Any costs for remediation of contamination not shown to be above the concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance Manual (1994), ~~Fast Site Cleanup Objectives\*~~ **329 IAC 9, and the RISC standards.**
- (12) Any costs related to the excavation and disposal of more than one thousand (1,000) cubic yards of soil, unless:
  - (A) alternative remediation techniques have been considered;
  - (B) excavation and disposal was shown to be the most cost effective remediation option; and
  - (C) the soil removal is part of a ~~Corrective Action Plan CAP~~ approved or deemed approved by the commissioner.
- (13) Any other cost not directly related to corrective action or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(c) Appropriate expenditures which may be considered for reimbursement are set forth in the following reimbursable expenditure chart:

Activity	Cost Range or Amount
<b>SITE INVESTIGATION</b>	
Mobilization and demobilization within a 50 mile radius. This includes the cost of moving general contractor owned equipment, set-up, and removing equipment .....	Maximum <del>\$200</del> <b>\$300</b>
Soil borings	
Number of feet in incremental amounts	
Less than 16 feet .....	\$20 per foot
16 through less than 26 feet .....	\$25 per foot
26 feet or more .....	\$30 per foot
Decontamination and equipment cleaning .....	\$10 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter) ...	\$90 per hole
Monitoring wells	
Installation which includes labor for completing soil boring as a monitoring well, surveying, and well development. Add to the cost of soil borings and materials .....	\$175 per well
Materials	

Well casing and screen (including riser) filter pack, annular and surface seal:

2 inch well .....	\$10 per foot
4 inch well .....	\$12 per foot
6 inch well .....	\$15 per foot
Flush-grade well covers .....	\$75 per cover

Sampling which includes on-site labor for site preparation, decontamination, sampling, and the cost for dispensable equipment such as ropes and plastic sheeting. Lab analyses, reports, mileage, per diem, and travel time are separate.

Bail and sample .....	\$50 per well
Check and record water .....	Add \$5 per well

Laboratory services which includes containers, packaging, and postage.

Soil analysis

TPH - <del>8015</del> .....	<del>\$125</del> <b>\$75</b> per sample
<b>TPH - 418.1</b> .....	<b>\$75 per sample</b>
<del>TPH-G only</del> .....	<del>\$105</del> per sample
<del>TPH-FQ only</del> .....	<del>\$150</del> per sample
VOC - <del>8260</del> .....	<del>\$250</del> <b>\$200</b> per sample
<b>SVOC- 8270</b> .....	<b>\$185 per sample</b>
<b>PAH - 8310</b> .....	<del>\$485</del> <b>\$185</b> per sample
PCB - <b>8080</b> .....	<del>\$125</del> <b>\$110</b> per sample
Metals - <b>(13)</b> .....	<del>\$150</del> <b>\$170</b> per sample
<b>BTEX/MTBE - 8020/8021</b> .....	<b>\$75 per sample</b>
<b>BTEX/MTBE - 8260</b> .....	<b>\$200 per sample</b>

Water analysis

TPH - <del>8015</del> .....	<del>\$125</del> <b>\$75</b> per sample
VOC - <del>8260</del> .....	<del>\$250</del> <b>\$200</b> per sample
BTEX/MTBE - <del>8020/8021</del> .....	<del>\$125</del> <b>\$75</b> per sample
<b>BTEX/MTBE - 8260</b> .....	<b>\$200 per sample</b>
SVOC - <del>8270</del> .....	<del>\$485</del> <b>\$275</b> per sample
<b>PAH - 8310</b> .....	<b>\$185 per sample</b>
Metals - <b>(13)</b> .....	<del>\$125</del> <b>\$170</b> per sample

**Monitored Natural Attenuation Parameters**

<b>Nitrates</b> .....	<b>\$15 per sample</b>
<b>Nitrites</b> .....	<b>\$15 per sample</b>
<b>Sulfate</b> .....	<b>\$15 per sample</b>
<b>Dissolved Methane</b> .....	<b>\$50 per sample</b>

**\*RISC will require DQO - Level IV, including raw data, internal chain of custody, and QA/QC .....** **20% markup allowed per sample**

Personnel costs which include costs for report preparation, analysis, and field work. Personnel costs must be documented.

**When submitting a claim for reimbursement the claimant shall be required to give the personnel classification, task being performed and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to 328 IAC 1-3-5(d) for task descriptions for personnel classifications.**

<b>Principal</b> .....	<b>\$110 per hour</b>
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Senior project manager <del>geologist, engineer, hydrogeologist</del> . . . . .	<del>\$90</del> <b>\$102</b> per hour
Project manager . . . . .	<del>\$73</del> <b>\$83</b> per hour
Staff project person . . . . .	<del>\$60</del> <b>\$70</b> per hour
Senior technician . . . . .	<del>\$50</del> <b>\$55</b> per hour
Technician . . . . .	<del>\$34</del> <b>\$38</b> per hour
Drafting person . . . . .	<del>\$31</del> <b>\$35</b> per hour
Word processor/clerical . . . . .	<del>\$24</del> <b>\$28</b> per hour
<del>Other clerical support</del> . . . . .	<del>\$20</del> per hour
<b>Toxicologist</b> . . . . .	<b>\$125 per hour</b>
Travel and per diem . . . . .	<b>current federal rate</b>
<b>Travel accommodations.</b> Luxury and resort accommodations not reimbursable . . . . .	<del>\$0.25</del> <b>\$79</b> per <b>mile day/plus tax</b>
Per diem . . . . .	<del>\$24</del> <b>\$26</b> per day ( <b>must include overnight stay and supporting documentation</b> )

**INITIAL ABATEMENT AND FREE PRODUCT REMOVAL**

Except where provided in this rule, approval of costs will be on a case-by-case basis.

Air monitoring . . . . .	\$50 per day
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**SITE SET-UP PREPARATION**

Trailer rental . . . . .	\$300 per month (\$10 per day)
Portable toilet . . . . .	\$150 per month (\$5 per day)

Utility check, the date and time of the utility check must be documented . . . . .	\$200 flat amount
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Utilities for temporary facilities

Temporary power . . . . .	\$500 per month (\$16.67 per day)
Temporary water . . . . .	\$150 per month (\$5 per day)
Temporary phone . . . . .	\$200 per month (\$6.67 per day)

**DEMOLITION**

Concrete and asphalt removal

Saw concrete, prices are per linear foot

	<u>4 inch concrete</u>	<u>6 inch concrete</u>
Under 200 feet . . . . .	<del>\$1.20</del> <b>\$1.60</b> per foot	<del>\$1.78</del> <b>\$2.00</b> per foot
200 through 400 feet . . . . .	<del>\$1.10</del> <b>\$1.40</b> per foot	<del>\$1.63</del> <b>\$1.81</b> per foot
400 through 600 feet . . . . .	<del>\$1.06</del> <b>\$1.33</b> per foot	<del>\$1.53</del> <b>\$1.70</b> per foot
600 through 1,000 feet . . . . .	<del>\$0.96</del> <b>\$1.20</b> per foot	<del>\$1.49</del> <b>\$1.66</b> per foot
Over 1,000 feet . . . . .	<del>\$0.86</del> <b>\$1.08</b> per foot	<del>\$1.44</del> <b>\$1.60</b> per foot

Saw asphalt, prices are per linear foot

	<u>3 inch asphalt</u>	<u>4 inch asphalt</u>	<u>6 inch asphalt</u>
Under 450 feet . . . . .	<del>\$0.34</del> <b>\$1.75</b> per foot	<del>\$0.44</del> <b>\$1.90</b> per foot	<del>\$0.55</del> <b>\$3.00</b> per foot
450 through 600 feet . . . . .	<del>\$0.34</del> <b>\$1.50</b> per foot	<del>\$0.42</del> <b>\$1.75</b> per foot	<del>\$0.63</del> <b>\$2.75</b> per foot
600 through 1,000 feet . . . . .	<del>\$0.29</del> <b>\$1.35</b> per foot	<del>\$0.39</del> <b>\$1.50</b> per foot	<del>\$0.60</del> <b>\$2.25</b> per foot

Over 1,000 feet ..... ~~\$0.27~~ **\$1.25** per foot      ~~\$0.34~~ **\$1.35** per foot      ~~\$0.58~~ **\$2.00** per foot

Concrete removal which includes the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees

4 inch concrete ..... ~~\$1.86~~ **\$3.00** per square yard ton  
 6 inch concrete ..... ~~\$3.58~~ **\$5.77** per square yard ton  
 7 inch through 9 inch concrete ..... ~~\$9.08~~ **\$17.47** per square yard ton  
 10 inch and over ..... ~~\$28.92~~ **\$43.96** per square yard ton  
 With rebar ..... Add 15%  
 For less than 500 square feet ..... Add 35%  
 Concrete curb ..... \$5.04 per linear foot

Asphalt removal which includes the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees

Removal asphalt pad (3 inches) ..... ~~\$0.16~~ **\$0.25** per square foot  
 Removal asphalt curb ..... \$1.41 per linear foot  
 For less than 500 square feet ..... Add 35%

**EXCAVATION**

Equipment costs and labor ..... \$2.22 per cubic yard ton  
 Mobilization ..... Maximum ~~\$200~~ **\$300**  
 Supplies, for example, visqueen, receipts must be included.  
 Stockpiling soil on-site ..... \$1.34 per cubic yard ton

Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless necessary as part of corrective action.

Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement

Under 1,000 gallons ..... \$1,000 per tank  
 1,000 through 4,999 gallons ..... \$1,500 per tank  
 5,000 through 10,000 gallons ..... \$2,000 per tank  
 Above 10,000 gallons ..... \$2,500 per tank

**TRANSPORTATION**

Loading ..... \$1.34 per cubic yard ton  
 Hauling, mileage must be documented ..... ~~\$7.32~~ **\$0.37** per cubic yard ton for each ~~20~~ **miles**

**DISPOSAL OF SOIL, GROUND WATER, AND TRASH**

Landfill fees  
 Sampling required by landfill. Must include receipts and analytical results from local municipality.  
 Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.  
 Contaminated or disposable equipment and decon fluids.

Landfill reimbursement will be based on the least expensive combination of documented transportation costs and documented disposal costs at a permitted landfill certified to accept special waste.

Trash ..... \$15 per cubic yard ton

**APPROVED TECHNOLOGIES**

Reimbursement for corrective action costs will be reimbursed on the basis of the lowest of 3 competitive bids on the work specified in the corrective action plan that is approved or deemed approved by the department.

Lease or rental on equipment will not be reimbursed above the purchase price.

**SITE RESTORATION**

Backfill hauling .....	<del>\$2.22</del> <b>\$0.37</b> per cubic yard ton for each mile
	<del>\$10</del> <b>\$10.00</b> per cubic yard ton/stone
Backfill material .....	<b>\$6.50</b> per ton/soil
<b>Backfill placement, compaction, and density verification ...</b>	<b>\$4.00</b> per ton
Resurfacing	
4 inch concrete .....	<del>\$2.41</del> <b>\$3.25</b> per square foot
For each <b>additional</b> inch of concrete .....	Add <del>\$0.23</del> <b>\$0.40</b> per square foot
For rebar .....	Add 15%
Asphalt pad, 4 inch thickness .....	<del>\$6.60</del> <b>\$2.15</b> per square yard foot
Asphalt curb and gutter .....	<del>\$3.95</del> <b>\$4.75</b> per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers .....	<del>\$485</del> <b>\$725</b> each
4 feet by 16 feet with 2 foot bumpers .....	<del>\$675</del> <b>\$1,100</b> each
<b>Equipment Rental (based on daily rate)</b>	
<b>Decon equipment (bucket, brushes, detergent) .....</b>	<b>\$10</b>
<b>Power auger .....</b>	<b>\$50</b>
<b>Hand auger sampling kit (hand auger/ brass sleeves) .....</b>	<b>\$35</b>
<b>Slide hammer core sampler .....</b>	<b>\$35</b>
<b>Photoionization detector .....</b>	<b>\$75</b>
<b>Flame ionization detector .....</b>	<b>\$95</b>
<b>LEL/O2 meter .....</b>	<b>\$50</b>
<b>pH and conductivity meter .....</b>	<b>\$20</b>
<b>Dissolved oxygen meter .....</b>	<b>\$30</b>
<b>2" submersible pump .....</b>	<b>\$115</b>
<b>4" submersible pump .....</b>	<b>\$95</b>
<b>Steam cleaner/pressure washer .....</b>	<b>\$75</b>
<b>Water level indicator .....</b>	<b>\$12</b>
<b>Oil/water interface probe .....</b>	<b>\$55</b>
<b>Bailer rental .....</b>	<b>\$15</b>
<b>Anemometer .....</b>	<b>\$35</b>
<b>Carbon dioxide meter .....</b>	<b>\$25</b>
<b>Portable generator, generator ≤ 5kW .....</b>	<b>\$50</b>
<b>Portable generator, generator &gt; 5kW .....</b>	<b>\$90</b>

(d) The following categories describe the personnel classification activity descriptions:

(1) Principal will do the following:

- (A) Supervise professional staff.
- (B) Serve as technical expert on sites.
- (C) Provide final review of project documents.
- (D) Limit site visits on projects.
- (E) Handle legal matters.
- (F) Coordinate with attorneys.

(2) Senior project manager (includes professional geologist, engineer, and hydrogeologist) will provide the following:

- (A) Project management/oversight.
- (B) Technical document preparation/review.
- (C) Coordination with agency, client and contractors.
- (D) Hydrogeologic and contaminate modeling.
- (E) Supervision of investigation/remediation activities.

- (F) Site access/permitting.
- (3) Project manager will provide the following:
  - (A) Remediation work plan preparation (CAP, ISC, FSI, pilot study).
  - (B) Site work preparation and planning.
  - (C) Supervision of remediation activities.
  - (D) Oversight of waste characterization, transportation, and disposal.
  - (E) RISC statistics and equations.
  - (F) Coordination of subcontractor work (drillers, plumbers, and electricians).
  - (G) Coordination of heavy equipment mobilization.
- (4) Staff project person will do the following:
  - (A) Implement remediation system installation, operation, and maintenance.
  - (B) Conduct site mapping.
  - (C) Assist with waste characterization, transportation, and disposal.
  - (D) Oversee installation of soil borings and monitoring wells.
  - (E) Provide on-site supervision and/or perform site characterization and remediation activities.
  - (F) Oversee well water records searches.
  - (G) Define site utilities marked.
  - (H) Survey wells.
  - (I) Oversee free product removal.
  - (J) Conduct quarterly sampling.
  - (K) Provide drilling/sampling support.
- (5) Senior technician will oversee the following:
  - (A) Activities associated with operation and maintenance of remediation system.
  - (B) Equipment installation.
- (6) Field technician will oversee the following:
  - (A) Well purging and development.
  - (B) Sample collection.
  - (C) Drum labeling/disposal.
  - (D) Decontamination/site cleanup tasks.
  - (E) Sample prep and delivery.
- (7) Drafting person will the following:
  - (A) Provide CADD work.
  - (B) Generate drawings, maps and plans, boring logs, and monitoring well installation logs.
  - (C) Revise drawings, maps and plans.
- (8) Word processor/clerical will provide the following:
  - (A) Word processing/data input.
  - (B) General clerical duties.
  - (C) Documentation reproduction, report binding, and filing.
  - (D) Proofreading/editing.
- (9) Toxicologist will Provide guidance for nondefault risk-based closures utilizing nondefault toxicological parameters.  
*(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1105)*

SECTION 21. 328 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-3-6 Limitation of liability**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 6. The application for or receipt of payment for corrective action does not limit the legal responsibility of a ~~tank owner or operator~~ **persons listed in 328 IAC 1-3-1** for damages incurred by another person as a result of a release. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055)*

SECTION 22. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-4-1 General procedure**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 1. (a) **The procedure set forth in this rule shall be followed in the event the unencumbered balance of funds in the fund falls below twenty-five million dollars (\$25,000,000) or by the discretion of the administrator.**

(a) (b) Each qualifying claim shall be assigned a priority score based on a ranking system designed to address the following:  
(1) Initial prioritization of all claims shall be based on the degree of environmental threat existing at the time the occurrence was discovered. The administrator shall assign a priority score upon evaluation of the following technical criteria (listed in descending order, from highest priority to lowest priority, clause (A) having the highest priority):

- (A) Impacts to public and private water supply.
- (B) Type of petroleum.
- (C) Health standards and explosivity hazard.
- (D) Corrective action taken.
- (E) Number of gallons released.
- (F) Degree of access to contaminated soil.
- (G) Designated use of surface water.
- (H) Site geology and hydrology.

(2) For purposes of scoring claims resulting from occurrences before the effective date of this article, and after March 31, 1988, the administrator shall give additional consideration for when the corrective action was taken.

(3) Scoring of claims shall be determined by application of the following site assessment model:

Site Assessment Scoring Model for Prioritization of Claims

<u>Criteria</u>	<u>Value</u>
Site assessment information.	
Public drinking water supply or well within 1 mile:	
Is contamination present in drinking water?	YES 15
	NO 1

Number of wells within 1 mile		
	1	1
	2 through 3	2
	4 through 6	3
	6 or more	4
Public water total _____ times 24 equals _____		
Private drinking water supply or well within 1 mile:		
Is contamination present in drinking water?	YES	15
	NO	0
Number of wells within 1 mile		
	1 through 10	1
	11 through 25	2
	26 through 100	3
	greater than 100	4
Private drinking water total _____ times 12 equals _____		
Type of petroleum		
Mixed products or waste oil		15
Leaded gasoline		13
Gasoline		12
Jet fuels		10
Diesel fuels		9
Heating fuels		8
Kerosene fuels		7
Crude oil		5
Other		—
Type of petroleum total _____ times 10 equals _____		
Health standards and explosivity hazards		
Contamination phase		
Vapors present at the time release discovered		10
Free product present at the time the release was discovered		7
Surface contamination present at the time the release was discovered		5
Structures affected		
Residential housing		7
Municipal, commercial, or industrial		5
Utility lines or trenches		1
Area designation		
Large municipality or urban area		7
Small municipality or suburban area		5
Rural, agricultural, or livestock area		1
Health standards total _____ times 6 equals _____		
Corrective action taken		
Corrective action complete		5
Corrective action over 50% complete		5
Corrective action initiated		5
Corrective action approved by IDEM		5
Site characterization complete		5
Release response measures complete		5
Corrective action total _____ times 4 equals _____		
Number of gallons released		
Over 12,000		10
5,000 through 11,999		8
2,000 through 4,999		6
500 through 1,999		4

100 through 500		2
Under 100		1
	Number of gallons released total _____ times 5 equals _____	
Degree of access to contaminated soil		
Contamination access		
Surface (0 to 2 feet below surface)		10
Subsurface (over 2 feet below surface)		5
	Access total _____ times 4 equals _____	

Designated use of surface water		
Surface waters within ½ mile		
Lake or river		3
Swamp or wetlands		3
Pond or canal		2
Stream, creek, or active drainage ditch		1
Distance to surface waters		
Under 500 feet		3
500 feet to ¼ mile		2
Over ¼ mile		1
Designated use of surface water		
Drinking water		4
Recreational or full body human contact		3
Aquatic, wildlife, or partial human contact		3
Agriculture or livestock		2
Designated use of surface water total _____ times 4 equals _____		
Site geology and hydrogeology		
Soil type		
Sand		4
Clay		1
Depth to water table in feet		
0 through 10		4
11 through 20		3
21 through 40		2
Over 40		1
Unusual geologic factors, for example, fractured bedrock, sand or gravel veins, perched aquifers, or geological outcroppings		
	YES	5
	NO	0
Site geology and hydrogeology total _____ times 3 equals _____		

(b) (c) To assure the efficient administration of the fund, the administrator may reclassify a claim at any time that it is determined a claim has been incorrectly ranked.

(e) (d) Placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347*)

SECTION 23. 328 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-4-3 Creation of subsequent priority lists**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-9-2; IC 13-23-9-4

Sec. 3. (a) Except for environmental emergencies, initial claims shall be ranked according to those conditions which existed at the time the corrective action was commenced. Claims determined to be of identical priority shall be ranked according to the date that an acceptable claim was received by the fund.

(b) Subsequent claims may be reprioritized based on the environmental threat present during the time period for which additional reimbursement is being claimed.

(c) The administrator shall notify claimants within sixty (60) days after the receipt of their claims whether their claims shall be approved for payment. If a claim is determined to be unacceptable or ineligible after reviewing the submitted information in accordance with IC 13-23-9-2, the administrator shall notify the owner or operator within ten (10) days of the denial and inform the claimant of the reasons for which the claim was rejected.

(d) Claims determined to be unacceptable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date that the fund receives the revised claim.

(e) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103*)

SECTION 24. 328 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-5-1 Applications for payment of corrective action**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 1. (a) Claim applications for reimbursement of corrective action costs shall be submitted on forms adopted by the administrator. Claimants shall itemize all charges as required by the application package. Documentation of expenses as required by the administrator must be submitted as part of the application.

(b) The application shall contain the following statement, which shall be signed and attested by the ~~owner or operator~~ **person applying to the fund**:

“I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the actual costs incurred in the performance of corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of corrective action.”

(c) Two (2) copies of all documents required by the administrator shall be submitted by the ~~owner or operator~~ **person applying to the fund** to support the application. Original documents must be kept by the ~~owner or operator~~ **person applying to the fund** for a minimum of four (4) years after the date the application for payment was submitted, or four (4) years after completion of corrective action, whichever is later.

**(d) A single claim application may not be submitted to the fund for reimbursement in an amount less than the following:**

**(1) Initial claim: the deductible amount applicable to the incident number.**

**(2) Subsequent claims: five thousand dollars (\$5,000) unless:**

**(A) The claim is the final application for that incident.**

**(B) The claim is for a third party liability claim.**

**(C) The claim is for costs incurred over a period of six (6) months or longer.**

**(3) Persons applying to the fund may resubmit claims in any amount if the costs were disallowed for lack of back-up documentation.**

**Persons applying to the fund shall identify the final application as such.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349*)

SECTION 25. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-5-2 Fund payment procedures for corrective action**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-9-2

Sec. 2. (a) Contingent on the availability of monies as determined by 328 IAC 1-2-3, the administrator shall authorize payment upon determining that the requirements of IC 13-23-9-2 have been met.

(b) Processing and payment of claims are contingent upon the availability of monies.

(c) When an ~~owner or operator~~ **person applying to the fund** submits an application under section 1 of this rule, which includes expenses for which the ~~owner or operator~~ **that person** has not made payment, then payment shall be made by check jointly to the ~~eligible owner or operator~~ **person applying to the fund** and the contractor.

(d) When an ~~eligible owner or operator~~ **person applying to the fund** submits documentation verifying that the ~~owner or operator~~

**that person** has paid for costs of corrective action, payment shall be made by check directly to ~~the eligible owner or operator.~~ **that person.**

~~(e) An eligible owner or operator~~ **A person who may apply to the fund under 328 IAC 1-3-1** may seek preapproval of ~~costs related a site's eligibility to have~~ corrective action **costs reimbursed** from the ~~department.~~ **fund.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103*)

SECTION 26. 328 IAC 1-5-3 IS ADDED TO READ AS FOLLOWS:

**328 IAC 1-5-3 Deemed approved; reimbursement of costs**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-8-4

**Sec. 3. "Deemed approved", under IC 13-23-8-4, means that the department shall consider the CAP approved solely for purposes of reimbursement of reasonable costs from the fund. A CAP having been deemed approved shall, in no way, relieve the person applying to the fund of the obligation to comply with all applicable rules or department standards.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-3*)

SECTION 27. 328 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-6-1 Applications for payment of third party liability claims**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-8-3

Sec. 1. (a) Applications for reimbursement of third party liability claims against owners or operators shall be submitted on approved forms established by the department. The claimant must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must submit proof of payment of the deductible amount under ~~IC 13-7-20-33(c).~~ **IC 13-23-8-3.**

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057*)

SECTION 28. 328 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-6-2 Fund payment procedures for third party liability**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23-9-3

Sec. 2. (a) If the attorney general determines that the requirements under ~~IC 13-7-20-38~~ **IC 13-23-9-3** have been met, the attorney general shall approve a request for indemnification of a third party not later than sixty (60) days after receiving the request:

(1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;

(2) based upon priority ranking of the site under 328 IAC 1-4; and

(3) if the administrator determines that the owner or operator is in compliance with the requirements of ~~IC 13-7-20~~ **IC 13-23** and rules adopted thereunder.

(b) When an owner or operator submits an acceptable application for indemnification of a third party but the claim has not already been paid by the owner or operator, then payment shall be made jointly by check to the eligible owner or operator and the third party.

(c) When an eligible owner or operator submits an acceptable application for indemnification of a third party along with documentation verifying that the owner or operator has paid the third party liability claim, payment shall be made directly to the eligible owner or operator.

**(d) Third party liability claims subject to review by the attorney general shall include:**

- (1) the reasonable costs associated with obtaining necessary access to properties not controlled by the claimant; and**
- (2) the reasonable costs associated with obtaining necessary institutional controls, including, but not limited to, deed restrictions required by risk integrated system of closure (risc).**

*(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057)*

SECTION 29. 328 IAC 1-7-1 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-7-1 Financial assurance certificate**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 1. (a) In accordance with 40 CFR 280.101, the department shall issue a certificate of financial assurance **upon request** to each eligible tank owner or operator, as defined in 328 IAC 1-3-3, within sixty (60) days after the effective date of this rule. Under ~~40 CFR 281.37~~, **IC 13-23 and the rules promulgated thereunder**, this state issued certificate shall fulfill the federal financial assurance requirements.

(b) The certificate of financial assurance shall contain the following information:

- (1) Facility name and address.
- (2) Facility identification number issued by the department.
- (3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(c) The owner or operator shall maintain the certificate of financial assurance ~~at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available immediately upon request of the department.~~ **in compliance with 329 IAC 9-8-21.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055)*

SECTION 30. 328 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-7-2 Termination of financial assurance by the department**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 2. If, after consultation with the financial assurance board, the department determines that insufficient monies exist to provide owners or operators evidence of financial assurance, the department shall notify all fund participants by certified mail. ~~Excess liability~~ **The fund coverage will continue for sixty (60) days after notice of termination of coverage. Owners or operators shall have sixty (60) days after receipt of termination of financial assurance to acquire financial assurance by other means.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057)*

SECTION 31. 328 IAC 1-7-3 IS AMENDED TO READ AS FOLLOWS:

**328 IAC 1-7-3 Revocation of certificate by the department**

**Authority:** IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

**Affected:** IC 13-23

Sec. 3. If the department determines that the owner or operator has not maintained eligibility for participation in the ~~excess liability~~ fund, the certificate of financial assurance issued by the department shall be revoked. The owner or operator shall have fifteen (15) days after revocation of a certificate to reinstate eligibility. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1058)*

SECTION 32. THE FOLLOWING ARE REPEALED: 328 IAC 1-1-5; 328 IAC 1-1-11; 328 IAC 2.

**Notice of First Meeting/Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 20, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington, Conference Center Rooms 4 and 5, the Underground Storage Tank Financial Assurance Board will hold a public hearing on amendments to 328 IAC.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from Pam Koons, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: Sue Zapf, ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317)233-6947(V) or (317) 232-6565 (TDD). Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor West, Indianapolis, Indiana and are open for public inspection.*